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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/755,353	01/05/2001	Carol Kohn Berning	8387$	4976

27752 7590 09/10/2003

THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
WINTON HILL TECHNICAL CENTER - BOX 161
6110 CENTER HILL AVENUE
CINCINNATI, OH 45224

EXAMINER
NGUYEN, TAN D

ART UNIT	PAPER NUMBER
3629	

DATE MAILED: 09/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/755,353	BERNING ET AL.	
	Examiner	Art Unit	
	Tan Dean Nguyen	3629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 January 2002* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-30* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-30* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *4* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Information Disclosure Statement

1. The prior art statement filed 6/25/01 has been received and recorded.

Claim Rejections - 35 USC § 112

1. Claims 14-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "operation of said product" is vague because it's not clear what the term "operation" means and there is no "operation" step in claim 1.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 20-22, 25-30 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over ROE et al (Article "The Impact ....FDA Experimental data").

As for claim 20, ROE et al discloses a facility (central facility) for conducting consumer product research, comprising: (a) at least one mock environment configured for testing a product in a desired context (how people, mall recruits, use food label information); and at least one device for collecting information (recording) during testing of the product in a mock environment (see pages 7, 8). Alternatively, the researching of other "testing type" of the product, i.e. taste or smell or effectiveness of the consumer product or service would have been obvious to a skilled artisan as mere routine experimentations to search other product characteristics using the same conducting steps, as also mentioned in ROE et al pages 7-8 (products, variables, models).

As for claim 21, the facility of ROE et al inherently includes a housing area for conducting the mock-up experiment since the term facility normally refers to a building having many rooms that facilitates some activities, i.e. a new facility for outpatient treatment. As for claim 22, ROE et al mentions example of testing of product by commercial company such as Kellogg's. Alternatively, it would have been obvious to connect the mock environment in a simulated commercial establishment to reduce cost of transportation of the testing products and to improve feedback responding efficiency (shorter time, distance, etc.) due to in house environment.

As for claim 25, this is taught on page 7, paragraph (3). As for claims 26-27, these are discussed on page 7, paragraph (1) whereby respondents are screened to match the profile for the study to validate the study's effectiveness. As for claim 28, ROE et al disclose that this research (interviews) is carried out in specified event at eight sites to boost consumer awareness of this diet-disease linkage and improve health benefit of the consumer. Alternatively, it would have been obvious to set up events such as "diet-disease linkage" to increase public awareness on public labels and advertising. As for the specific operation of the mock environment as shown on claims 29-30, these concepts are taught on page 7, 2nd and 3rd paragraphs wherein respondents are specifically screened and product mock-ups are chosen, major design elements of well known brand names are used. Alternatively, the selection of desired consumer, configuration of the mock environment, effectiveness of interview monitoring, etc., is considered as optimizing operating conditions or result effective variables and the optimizing of result effective variables is considered as routine experimentation to determine optimum or economically feasible reaction conditions and would have been obvious to the skilled artisan. In re Aller, 105 USPQ 233.

5. Claims 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over ROE et al.

As for claim 23, ROE et al discloses the collecting of the consumer's response (recording and observing the recorded information). As for the use of remote control to inherently control the research from a far and/or minimize distraction to the mocking environment is well known practice and would have been obvious to use it if desired.

As for claim 24, the various ways for collecting the information which are well known researching variables, whether it's together in the same setting or separate setting, would have been obvious as a matter of choice.

6. Claims 1-19 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over ROE et al (Article "The Impact ....FDA Experimental data").

As for claim 1, ROE et al discloses a method for conducting consumer product research, comprising the following steps: (a) configuring a mock environment so as to test a product in a desired context (how people, mall recruits, use food label information); (b) placing at least consumer (recruits/respondent) within the mock environment for testing products and (c) collecting information (recording) during testing of the product (see pages 7, 8). Alternatively, the researching of other consumer product or service would have been obvious as mere applying to other product testing issues and this is also mentioned in ROE et al pages 7-8 (products, variables, models).

As for claim 2, the facility of ROE et al inherently includes a housing area for conducting the mock-up experiment since the term facility normally refers to a building having many rooms that facilitates some activities, i.e. a new facility for outpatient treatment. As for claims 4, 6, 7, 8, these are taught on page 7, 2nd and 3rd paragraphs and page 8, 2nd paragraph, page 9, last paragraph. As for claim 9, the candidate screening step is taught on page 7, 1st paragraph, to select consumer who reportedly did half or more of the household food shopping, 18 years of age or older, could read small print. As for claims 10, 11, 12, the teaching of matching of people with the mock

environment is shown on page 7, 1st and 2nd paragraph, where people of different places and conditions are selected for the testing of different mock-up products.

As for claim 13, ROE et al teaches the recording of the customer's feedback and reading behaviors and observation of the behavior which inherently include the use of well known and available audiovisual device (video) wherein behavior can be seen and evaluated. Alternatively, the use of audiovisual device to capture complete customer's responses, voice, figure and data is well known and would have been obvious to do so capture complete customer's responses as mentioned above. As for claims 14-15, these are taught by ROE et al on page 7, 2nd paragraph, "a study for the FDA (or third party) about how people used food label information". Furthermore, it's well know that the use of a 3rd party would provide true survey/responses due to the non-bias environment. As for claim 16, it's rejected for the same reason set forth in claim 22 above. As for the type of product for testing as shown on claims 17-18, the generic conducting consumer product steps is applicable for all types of product as shown on page 7, last paragraphs, from service (health claim) to physical products. The inclusion of other type of product testing such as form of communication or other using the same conducting steps would have been obvious as mere using other similar type of product. As for claim 19, this is shown on page 7, last paragraph.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

1) US Patent:

US 5,848,399 is cited to teach a facility and method for conducting consumer product research comprising (a) configuring a mock environment (image representative of a store shelf) so as to test a product in a desired context (the set-up of shelf display for consumer purchase), (b) placing a consumer within the environment for testing, and (c) collecting the information during testing and analyzing the information for later use (see col. 2, lines 25-50, col. 5, col. 6, col. 12). To avoid official duplicate claim rejection, this reference is cited here for applicant's awareness. However, it may/can be used in the future if needed.

2) Foreign:

WO 01/69483 A2 is cited to teach a method and system for electronically delivering targeted invitations to participate in market research, based on observed purchase behavior.

3) Non-Patent Non Full-Text Literature:

Article "Wayfinding : the consumer search experience" is cited to teach the use of mock-up environment to study shopping experience.

2. Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, should be directed to the group clerical personnel and not to the examiner. As the official records and applications are located in the clerical section of the examining Tech Center, the clerical personnel can readily provide status information without contacting the examiner. See MPEP 203.08. The Tech Center clerical receptionist number is (703) 308-1113.

In receiving an Office Action, it becomes apparent that certain documents are missing, e. g. copies of references, Forms PTO 1449, PTO-892, etc., requests for copies should be directed to Tech Center 3600 Customer Service at (703) 306-5771, or e-mail CustomerService3600@uspto.gov .

Any inquiry concerning the merits of the examination of the application should be directed to Dean Tan Nguyen at telephone number (703) 308-2053. My work schedule is normally Monday through Friday from 7:00 am through 4:30 pm.

Should I be unavailable during my normal working hours, my supervisor John Weiss may be reached at (703) 308-2702. The FAX phone numbers for formal communications concerning this application are (703) 305-7687. Informal communications may be made, following a telephone call to the examiner, by an informal FAX number to be given.

Other possibly helpful telephone numbers are:

Allowed Files & Publication	(703) 305-8322
Assignment Branch	(703) 308-9287
Certificates of Correction	(703) 305-8309
Drawing Corrections/Draftsman	(703) 305-8404/ 8335
Fee Questions	(703) 305-5125
Intellectual Property Questions	(703) 305-8217
Petitions/Special Programs	(703) 305-9282
Terminal Disclaimers	(703) 305-8408
Information Help Line	1-800-786-9199

dtn
September 5, 2003

DEAN T. NGUYEN
PRIMARY EXAMINER